

NDM 31258
SDR-922-92-02
3165.3 (922.1)

June 18, 1992

P 114 728 215

CERTIFIED-RETURN RECEIPT REQUESTED

Decision

Bob Dennis)
P.O. Box 816) SDR No. 922-92-02
Belfield, North Dakota 58622)

AFFIRMED; Penalty Modified

Bob Dennis requested a State Director Review (SDR) of a decision by the Dickinson District (DDO) Manager, dated March 30, 1992 (Enclosure 1), concerning the notice of proposed civil penalty for failure to submit a site facility diagram (SFD) for the US 10-9 facility located on Federal oil and gas lease No. NDM 31258.

The request for this SDR dated April 14, 1992 (Enclosure 2), was timely received on April 21, 1992. Additional data relevant to his case was received on May 28, 1992. Bob Dennis also requested that he be allowed to present his arguments orally concerning the notice for proposed civil penalties. Bob Dennis' oral presentation was given at the Montana State Office (MSO) on June 4, 1992.

On August 30, 1991, Bob Dennis was issued an Incidents of Noncompliance (INC) No. IKD91071 (Enclosure 3) to revise the SFD for the US 10-9 facility, located on lease No. NDM 31258, in the NW4SE4, sec. 9, T. 141 N., R. 102 W., Billings County, North Dakota. The SFD was not in conformance with Onshore Order No. 3, Section III. I. 1. The DDO did not receive the revised SFD from Bob Dennis within the abatement period of September 30, 1991.

On October 10, 1991, a second INC (No. IKD92001) (Enclosure 4) was issued to Bob Dennis requiring the revised SFD to be submitted and was given an abatement date of November 17, 1991. The INC also informed Bob Dennis of an assessment of \$250 for failure to comply with an order of the authorized officer, as per 43 Code of Federal Regulation (CFR) 3163.1(a) (2). Bob Dennis also failed to comply with this INC.

On January 17, 1992, the DDO informed Bob Dennis by letter (Enclosure 5) that he was still in noncompliance and ordered that the revised SFD be submitted. The letter also informed Bob Dennis that he was being assessed civil penalties as per 43 CFR 3163.2(g)(2)(iii). Under this section of the regulations, civil penalties are assessed at the rate of \$50 per day for each day noncompliance continues beginning with the date of the second notice. The DDO determined

the date of the second notice to be October 11, 1991, the date Bob Dennis received the second INC. However, due to the length of time between the abatement period of the second INC (November 17, 1992) and the notice of civil penalties, a de facto extension date of January 1, 1992, was granted. The DDO used this date to calculate their civil penalty amount. Bob Dennis was given 20 days from receipt of this notice (January 21, 1992) to submit the required information. The revised SFD was not received by the DDO within this abatement period.

On February 19, 1992, the DDO informed Bob Dennis by letter (Enclosure 6) that the 20 days had lapsed, once again instructed Bob Dennis to submit the SFD, and gave an additional 20 days (March 1, 1992, abatement date) to submit the required information. This notice also informed Bob Dennis that as per 43 CFR 3163.2(g)(2)(iii), civil penalties were being assessed at a rate of \$500 per day for each day of continued noncompliance beginning with the date of second notice. Once again, the DDO did not receive the revised SFD.

On March 30, 1992, the DDO issued a certified letter (Enclosure 1) to Bob Dennis of proposed civil penalties of \$30,000 for failure to submit the revised SFD.

Bob Dennis presented the following arguments to support his case; after each argument is a statement of our finding on that matter:

1. Bob Dennis indicated at the oral presentation that he submitted the revised SFD to the DDO between January 17 and 21, 1992 (Enclosure 7), in response to the INC issued by the DDO on October 10, 1991. On January 21, Bob Dennis received a certified letter from the DDO stating that he was still in noncompliance and would be assessed civil penalties. Bob Dennis was under the assumption that the revised SFD he mailed between January 17 and 21, 1992 may have been received by the DDO and, therefore, he was already in compliance.

The DDO had no record of receiving this revised SFD and Bob Dennis did not provide any evidence that the revised SFD was mailed between January 17 and 21.

2. On March 11, 1992, Bob Dennis handcarried the revised SFD to the DDO for their review. This revised SFD was rejected by the DDO on March 30, 1992, due to incompleteness.

This revised SFD was submitted after all the abatement periods were exhausted under the 43 CFR 3163.2.

3. The previous operator operated the wells for more than 2 years and was never notified that the SFD was in noncompliance.

The proposed civil penalty is for failure on Bob Dennis' part to submit a revised SFD request by the DDO. Whether the SFD submitted by the previous operator was in compliance or not is irrelevant to this case.

We, therefore, affirm the DDO Manager's decision on the notice of proposed civil penalty against Bob Dennis. However, in reviewing the nature of the violation, it is our conclusion that the penalty, as presently proposed, is excessive, even though the DDO's actions were technically and procedurally correct. Pursuant to 43 CFR 3163.2(h), the proposed civil penalty is hereby reduced to \$5,000. We conclude that this amount is appropriate within the spirit and intent of the regulations.

Pursuant to the 43 CFR 3165.3(c), you have the right to request a hearing on the State Director's decision on the proposed civil penalty before an Administrative Law Judge or, in lieu of a hearing, may appeal the State Director's decision to the Interior Board of Land Appeals (IBLA), Office of the Secretary, in accordance with the regulations contained in 43 CFR 4.400 and the attached Form 1842-1 (Enclosure 8). Pursuant to 43 CFR 3165.4(e), "Because section 109 of the Federal Oil and Gas Royalty Management Act (FOGRMA) provides for judicial review of civil penalties determinations only where a person has requested a hearing on the record, a waiver of such hearing precludes further review by district court." Therefore, if you appeal to IBLA, you waive the right to appeal to District Court under section 109(j) of the FOGRMA.

If you request a hearing on the record, such request shall be filed in writing with the Montana State Office, State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107, within 30 days of receipt of this decision. If you appeal to the IBLA, a Notice of Appeal must be filed in this office at the aforementioned address within 30 days from the receipt of this decision. A copy of the Notice of Appeal and of any statement of reasons, written arguments, or briefs must also be served on the Office of the Solicitor at the address shown on Form 1842-1 and to this office. The appellant has the burden of showing that the decision appealed from is in error.

Sincerely,

/s/ Donald L. Gilchrist

Donald L. Gilchrist
Acting Deputy State Director
Division of Mineral Resources

8 Enclosures

- 1-DDO letter dated March 30, 1992 (3 pp)
- 2-SDR Request dated April 14, 1992 (7 pp)
- 3-INC No. IKD91071 (2 pp)
- 4-INC No. IKD92001 (2 pp)
- 5-DDO letter dated January 17, 1992 (3 pp)
- 6-DDO letter dated February 19, 1992 (2 pp)
- 7-January 17, 1992, Sundry Notice (6 pp)
- 8-Form 1842-1 (1 p)